IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A. O. NO. 3 OF 2006

Mrs. Virgin William D' Souza & ors .. ... Appellant.
VS.
Mrs. Magdoline Mathew D'Souza & anr. ... Respondents

Mr. Deepak Chitnis for appellant.
Mr. H.S.S. Murthy with Mr. D.R. Tiwari for respondents.

CORAM: D. G. KARNIK **J.**
DATE: 6th October 2006.

P.C.:

1. Heard counsel for the parties.

2. This appeal is directed against the order dated 29th January 2005 passed by the learned Judge of the City Civil Court in Notice of Motion No. 4560 of 2004 in a suit filed by the respondents herein.

3. The suit property originally belonged to Mr. Marian Joseph D'Souza, Mrs Ursela Lawrence D' souza and Mr. Joseph Francis D'souza. The respondents who are the original plaintiffs are the descendents of Mrs. Ursela D' souza.

4. The respondents filed a suit bearing, Suit No. 5211 of 2004 in the City Civil Court for a declaration that the appellants

had no right to sell of or create third party interest or part with the possession of the suit property nor do they have a right to demolish the old structures, or any part thereof without prior consent of the respondents. In the suit the respondents took out a motion for interim relief with similar prayers. By the impugned order the learned judge allowed the motion and has granted the injunction.

5. Mr. Chitnis, learned counsel for the appellant submitted that there was a partition between the owners in the year 1965 and in the partition the suit property was allotted to the share of Mr. Marian D'souza; Mrs Ursela D' Souza' s ceased to have any share in the suit property. Therefore, the plaintiffs have no right, title and interest in the suit property. It may be noted that the parties are Christian by religion. There is no written and registered deed of partition executed between the parties. Prima facie, there is no evidence of partition as claimed.

6. Mr. Chitnis submits that Marian has sold the suit property to William, through whom the appellants claim and therefore , partition must be presumed. Any statement made in the conveyance executed by Marian would not in any way bind bound Ursela or the respondents.

7. Since original title of Ursela has been admitted and since

there is no proof of partition it must be presumed that Ursela and after her the present respondents have a share in the suit property. The respondents have thus made out a strong prima facie case of their having a share in the suit property. Therefore the respondents were entitled to an injunction.

8. There is no merit in the appeal and the same is dismissed summarily.

(D.G. KARNIK J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil application No. 1344 of 2005
in

A. O. NO. 3 OF 2006

Mrs. Virgin William D' Souza & ors .. ... Appellant.
VS.
Mrs. Magdoline Mathew D'Souza & anr. ... Respondents

Mr. Deepak Chitnis for appellant.
Mr. H.S.S. Murthy with Mr. D.R. Tiwari for respondents.

CORAM: D. G. KARNIK **J.**
DATE: 6th October 2006.

P.C.:

In view of the disposal of the appeal this civil application does not survive and is disposed of.

(D.G. KARNIK J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Contempt Petition No. 220 of 2006
with

A. O. NO. 3 OF 2006

Mrs. Magdoline Mathew D'Souza & anr. ... Petitioners
VS.
Mrs. Virgin William D' Souza & ors .. ... Respondents.

Mr. D. R. Tiwari for petitioners.

CORAM: D. G. KARNIK **J.**
DATE: 6th October 2006.

P.C.:

Learned counsel for the petitioners seeks leave to withdraw the contempt petition with liberty to move the trial court for appropriate orders. Contempt petition allowed to be withdrawn with liberty as above.

(D.G. KARNIK J.)